

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION**

WAVE NEUROSCIENCE, INC. a  
Delaware Corporation,

Plaintiff,

vs.

BRAIN FREQUENCY LLC, a Texas  
Limited Liability Company

Defendant.

Case No. 5:23-CV-00626-XR

Honorable: Xavier Rodriguez

**PLAINTIFF’S ANSWER TO  
DEFENDANT’S  
COUNTERCLAIMS**

**PLAINTIFF WAVE NEUROSCIENCE, INC.’S ANSWER TO DEFENDANT  
BRAIN FREQUENCY LLC’S COUNTERCLAIMS**

Plaintiff and Counterclaim Defendant Wave Neuroscience, Inc. (“Wave” or “Plaintiff”) respectfully answers the Counterclaims filed by Defendant and Counterclaim Plaintiff Brain Frequency LLC (“Brain Frequency”) on November 13, 2023 (Dkt. 13).

Wave denies all allegations in Defendant’s Counterclaims, whether express or implied, that are not specifically admitted below. Wave denies that Defendant is entitled to the relief requested or any other relief.

**COUNTERCLAIMS**

Defendant alleges the following counterclaims against Plaintiff:<sup>1</sup>

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<sup>1</sup> Each of the numbered paragraphs herein correspond to the same paragraph in Defendant’s Counterclaim.

### **THE PARTIES**

1. On information and belief, Wave admits that Brain Frequency is a Texas limited liability company with its principal place of business at 26229 N. Cranes Mill Rd., Canyon Lake, TX 78133.

2. Admitted.

### **NATURE OF THE ACTION**

3. Admitted.

4. Wave admits it has accused Brain Frequency of infringing one or more claims of U.S. Patent No. 8,926,490, U.S. Patent No. 10,029,111, U.S. Patent No. 8,465,408, and U.S. Patent No. 8,870,737 (collectively, the “Patents-in-Suit”). Wave does not contest that Brain Frequency denies that it infringed any valid or enforceable claim of the Patents-in-Suit or that it is liable for any infringement. Wave also does not contest that Brain Frequency is alleging that the Patents-in-Suit are invalid for failing to meet the applicable statutory requirements in Part II of Title 35 of the United States Code including 35 U.S.C. §§ 102, 103, and 112 as conditions of patentability. Wave denies that any of the Patents-in-Suit are invalid or unenforceable, or that Brain Frequency is not liable for any infringement.

5. This paragraph of Defendant’s Counterclaims recites conclusions of law, to which no response is required. To the extent a response is required, Wave

denies all allegations that it has committed any act that would give rise to any cause of action under the Counterclaims.

### **JURISDICTION AND VENUE**

6. This paragraph of Defendant's Counterclaims recites conclusions of law, to which no response is required. To the extent a response is required, Wave denies all allegations that it has committed any act that would give rise to any cause of action under the Counterclaims.

7. This paragraph of Defendant's Counterclaims recites conclusions of law, to which no response is required. To the extent a response is required, Wave does not contest the subject matter jurisdiction of this Court for the purposes of this civil action. Wave denies all allegations that it has committed any act that would give rise to any cause of action under the Counterclaims.

8. This paragraph of Defendant's Counterclaims recites conclusions of law, to which no response is required. To the extent a response is required, Wave does not contest the personal jurisdiction of this Court for the purposes of this civil action. Wave denies all allegations that it has committed any act that would give rise to any cause of action under the Counterclaims.

9. This paragraph of Defendant's Counterclaims recites conclusions of law, to which no response is required. To the extent a response is required, Wave does not contest that venue is proper in this Court for the purposes of this civil

action. Wave denies all allegations that it has committed any act that would give rise to any cause of action under the Counterclaims.

**COUNT I**  
**DECLARATORY JUDGMENT OF NON-INFRINGEMENT**

10. Wave incorporates by reference each of its answers to each allegation set forth in the preceding paragraphs as if set forth fully herein.

11. This paragraph of Defendant's Counterclaims recites conclusions of law, to which no response is required. To the extent a response is required, Wave admits it has accused Brain Frequency of infringing one or more claims of the Patents-in-Suit and denies all allegations that it has committed any act that would give rise to any cause of action under the Counterclaims.

12. This paragraph of Defendant's Counterclaims recites conclusions of law, to which no response is required. To the extent a response is required, Wave denies the allegations set forth in this paragraph.

13. This paragraph of Defendant's Counterclaims recites conclusions of law, to which no response is required. To the extent a response is required, Wave denies the allegations set forth in this paragraph.

14. This paragraph of Defendant's Counterclaims recites conclusions of law, to which no response is required. To the extent a response is required, Wave denies the allegations set forth in this paragraph.

**COUNT II**  
**DECLARATORY JUDGMENT OF INVALIDITY**

15. Wave incorporates by reference each of its answers to each allegation set forth in the preceding paragraphs as if set forth fully herein.

16. This paragraph of Defendant's Counterclaims recites conclusions of law, to which no response is required. To the extent a response is required, Wave denies all allegations that it has committed any act that would give rise to any cause of action under the Counterclaims.

17. This paragraph of Defendant's Counterclaims recites conclusions of law, to which no response is required. To the extent a response is required, Wave denies the allegations set forth in this paragraph.

18. This paragraph of Defendant's Counterclaims recites conclusions of law, to which no response is required. To the extent a response is required, Wave denies the allegations set forth in this paragraph.

19. This paragraph of Defendant's Counterclaims recites conclusions of law, to which no response is required. To the extent a response is required, Wave denies the allegations set forth in this paragraph.

20. This paragraph of Defendant's Counterclaims recites conclusions of law, to which no response is required. To the extent a response is required, Wave denies the allegations set forth in this paragraph.

**DEMAND FOR JURY TRIAL**

Wave has demanded a trial by jury on all issues so triable and admits that Defendant purports to join in this demand.

**PRAYER FOR RELIEF**

Wave denies that Defendant is entitled to any of the relief requested in the Counterclaims, or any other relief of any kind. The Patents-in-Suit (U.S. Patent No. 8,926,490, U.S. Patent No. 10,029,111, U.S. Patent No. 8,465,408, and U.S. Patent No. 8,870,737) are valid, enforceable, and infringed by Defendant. Defendant is not entitled to any legal or equitable relief or attorneys' fees. Defendant's prayer for relief should be denied in its entirety, and the Court should award Wave its reasonable costs and attorneys' fees pursuant to 35 U.S.C. § 285 or other applicable laws.

DATED: December 4, 2023

Respectfully submitted,

/s/ J. Rick Taché

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*Attorneys for Plaintiff*  
**WAVE NEUROSCIENCE, INC.**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a) on December 4, 2023.

/s/ J. Rick Taché  
J. Rick Taché